

**Board of Forestry and Fire Protection**

**NOTICE OF PROPOSED ACTION**

**“RULE ALIGNMENT, 2015”**

**Title 14 of the California Code of Regulations (14 CCR):**

**Division 1.5, Chapter 4,  
Subchapter 1, Article 1  
Subchapter 4, Article 6, 7, 14  
Subchapter 5, Article 7, 12  
Subchapter 6, Article 7, 14  
Subchapter 7, Article 2, 6.8, 7**

[Notice Published August 14, 2015]

**NATURE OF PROCEEDING**

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

**PUBLIC HEARING**

The Board will hold a public hearing on Thursday, October 1, 2015, at its regularly scheduled meeting commencing at 9:00 a.m., at the DoubleTree Hotel, Salon D1, 2233 Ventura Street, Fresno, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, September 28, 2015.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Themi Borrás  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

**AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)**

**14 CCR § 895.1** Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code. Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.

**14 CCR § 916.9** Note: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code. Reference: Sections 751, 4512, 4513, 4551.5, 4750, 4750.3, 4750.4, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code.

**14 CCR § 917.2** Note: Authority cited: Sections 4551 and 4562, Public Resources Code. Reference: Sections 4513, 4551.5 and 4562, Public Resources Code.

**14 CCR § 937.2** Note: Authority cited: Sections 4551 and 4562, Public Resources Code. Reference: Sections 4513, 4551.5 and 4562, Public Resources Code.

**14 CCR § 957.2** Note: Authority cited: Sections 4551 and 4562, Public Resources Code. Reference: Sections 4513, 4551.5 and 4562, Public Resources Code.

**14 CCR § 937.3** Note: Authority cited: Sections 4551 and 4562, Public Resources Code. Reference: Sections 4423, 4513, 4551.5, 4562, and 4562.7, Public Resources Code

**14 CCR § 957.3** Note: Authority cited: Sections 4551 and 4562, Public Resources Code. Reference: Sections 4423, 4513, 4551.5, 4562, and 4562.7, Public Resources Code.

**14 CCR § 929.1** Note: Authority cited: Sections 4551 and 4551.5, Public Resources Code. Reference: Sections 4582(f), 21002 and 21060.5, Public Resources Code.

**14 CCR § 949.1** Note: Authority cited: Sections 4551 and 4551.5, Public Resources Code. Reference: Sections 4582(f), 21002 and 21060.5, Public Resources Code.

**14 CCR § 969.1** Note: Authority cited: Sections 4551 and 4551.5, Public Resources Code. Reference: Sections 4582(f), 21002 and 21060.5, Public Resources Code.

**14 CCR § 1038** Note: Authority cited: Sections 4551, 4553, 4584, 4584.1 and 4584.1, Public Resources Code. Reference: Sections 4516, 4527, 4584 and 4584.1, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

**14 CCR § 1039.1** Note: Authority cited: Sections 4551, 4553, 4590 and 4591, Public Resources Code. Reference: Sections 4582.7, 4590, 4591 and 4591.1, Public Resources Code.

**14 CCR § 1041** Note: Authority cited: Sections 4551, 4551.5, 4552 and 4553, Public Resources Code. Reference: Section 4590, Public Resources Code.

**14 CCR § 1052.1** Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference: Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

**14 CCR § 1092.01** Note: Authority cited: Sections 4551 and 4553, Public Resources Code. Reference: Sections 4551, 4553 and 4590(a)(1), Public Resources Code.

**14 CCR § 1092.26** Note: Authority cited: Sections 4551 and 4553, Public Resources Code. Reference: Sections 4551 and 4553, Public Resources Code.

**14 CCR § 1092.28** Note: Authority cited: Sections 4551, 4553, 4590 and 4591, Public Resources Code. Reference: Sections 4582.7, 4590, 4591 and 4591.1, Public Resources Code.

**14 CCR § 1109.4** Note: Authority cited: Section 4621.2(a)(3) and 4623, Public Resources Code. Reference: Section 4621.2(a)(3), Public Resources Code.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))**

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

The problem is as new material is amended into, outdated material is repealed from, or material is updated in this comprehensive assemblage of forest practice regulations, inconsistencies, errors, and omissions are sometimes introduced. Additionally, updating rules to be consistent with statute sometimes falls behind.

The purpose of the proposed action is for clean-up and catch up.

On July 23, 2015, the Board took action to authorize a 45-Day Notice, as part of regular rulemaking, for the regulation entitled “Rule Alignment, 2015”.

The effect of the proposed action is to improve the implementation of the Forest Practice Rules by timber owners, Registered Professional Foresters (RPF), Licensed Timber Operators (LTO), and the Department through modifications to the existing Forest Practice Rules. It makes consistent inconsistencies, corrects errors, and populates omissions. In addition, the proposed action makes specific statute, specifically PRC § 4590, regarding the effective period of a plan, and updates the rules to be consistent with statute, specifically PRC § 4584. The proposed action also includes the addition of drought as one of the conditions that constitute an emergency, which recently became effective as a result of the approval of the Drought Mortality Exemption (emergency rulemaking); the proposed action would make the addition of drought as one of the conditions that constitute an emergency, permanent. See summary below:

1. Amend 14 CCR §§ 895.1, 1092.26(d)(2), and 1109.4 to delete and update obsolete terms “Erosion Potential” and “Estimated Erosion Potential” and replace them with “Erosion Hazard Rating”.
2. Amend 14 CCR §§ 895.1, 937.3, and 957.3 to delete and update the obsolete term “stream and lake protection zone” and replace it with “watercourse lake and protection zone”.
3. Amend 14 CCR §§ 895.1 (Feasible), 1039.1, 1041, 1092.01(e), and 1092.28(a) to address the change in effective period pursuant to AB 1492 (which amended PRC § 4590); replace 3 years with 5 years.
4. Remove 14 CCR § 1038(i)(15), the sunset clause, pursuant to SB 1541 (which amended PRC § 4584(j)).
5. Amend 14 CCR § 1038(i), replace reference to the specific form with reference to 14 CCR § 1038.2.
6. Amend 14 CCR § 1038(j)(5)(A) and (B) to include Coast District stocking standards and differentiate the stocking standards for the Northern and Southern Districts, pursuant to AB 1867 (which amended PRC § 4584).
7. Amend 14 CCR § 929.1 [949.1, 969.1] (e)(2)(B) to reference 14 CCR § 895.1 where the updated definition of the Confidential Archaeological Letter exists.
8. Amend 14 CCR §§ 1038(i)(7) and 1038(j)(7) to qualify the reference to the updated definition of the Confidential Archaeological Letter to make it clear that 14 CCR § 929.1 [949.1,969.1] (c)(3) does not apply to the 1038(i) and 1038(j) exemptions.
9. Amend 14 CCR § 917.2 [937.2, 957.2] to make it congruent with road rules by striking “but excluding appurtenant roads”.
10. Amend 14 CCR §§ 916.9(e) and 1038(i) to include “approved and” in front of “legally permitted structure” for consistency.
11. Amend 14 CCR § 1052.1 (b) to include drought.

The primary benefit of the proposed action is improved implementation of the Forest Practice Rules that will yield improved resource protection, planning (efficiency in plan development and plan review), and enforcement (more enforceable and achievable).

There is no comparable federal regulation or statute.

Board staff conducted an evaluation to determine whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including portions of §§ 14 CCR 895.1, 14 CCR § 912.5 [932.5, 952.5], 913.2 [933.2, 953.2], 929.1, 1038 and 1038.2 of Title 14 of the California Code of Regulations) to improve the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and found no existing State regulations that meet the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends the rules providing improved consistency and compatibility.

No documents are incorporated by reference.

#### **MANDATED BY FEDERAL LAW OR REGULATIONS**

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA. No existing Federal regulations meeting the same purpose as the proposed action were identified.

#### **OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))**

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

#### **LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5))**

The proposed action does not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))**

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Although the proposed action will improve the implementation of the Forest Practice Rules and make the review of plans and enforcement more efficient, a savings is not expected given the small scale of the proposed action. In general, the cost to administer the Forest Practice Program is covered by the Timber Regulation and Restoration Fund. The proposed action will not produce costs or savings to any State agency.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

**HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))**

The proposed action will not significantly affect housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action is for clean-up and catch up. It makes consistent inconsistencies, corrects errors, and populates omissions. In addition, the proposed action makes specific statute and updates the rules to be consistent with statute. The proposed action also makes permanent the addition of drought as one of the conditions that constitute an emergency.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

This initial determination is based on consideration, by Board staff in July of 2015, of the economic impact of each provision of the proposed action.

**STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) will not create or eliminate jobs within California;
- (B) will not create new businesses or eliminate existing businesses within California;
- (C) will not affect the expansion of businesses currently doing business within California.
- (D) will yield nonmonetary benefits through improved implementation of the Forest Practice Rules that will yield improved resource protection, planning (efficiency in plan development and plan review), and enforcement (more enforceable and achievable).

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))**

The proposed action does not impose a business reporting requirement.

## **SMALL BUSINESS (pursuant to 1 CCR 4(a) and (b))**

Small business, pursuant to GOV § 11342.610:

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

The proposed action is for clean-up and catch up. It makes consistent inconsistencies, corrects errors, and populates omissions. In addition, the proposed action makes specific statute and updates the rules to be consistent with statute. The proposed action also makes permanent the addition of drought as one of the conditions that constitute an emergency. Accordingly, the proposed action improves the implementation of the Forest Practice Rules and makes the development of plans more efficient and enforcement more achievable. Nevertheless, given the small scale of the proposed action, small business is not expected to be affected by the proposed action.

## **ALTERNATIVES INFORMATION**

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations, and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Thembi Borrás  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9633

The designated backup person in the event Ms. Thembi Borrás is not available is Mr. Matt Dias, Acting Executive Officer to the Board of Forestry. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

## **AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16))**

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **FINAL STATEMENT OF REASONS**

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

## **INTERNET ACCESS**

All of the material referenced in the Availability Statements is also available on the Board web site at:

[http://bofdata.fire.ca.gov/regulations/proposed\\_rule\\_packages/](http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/)